

REMARKS

The Office Action dated June 9, 2004 has been received and carefully reviewed. It is submitted that by this response, all bases of rejection and objection are traversed. A restriction has been required, and an election of the claims of Group 1 has been made. Upon entry of this response claims 1-11, and 13-19 remain in the application. Claims 12, 20-23 have been canceled.

The drawing is objected to because it fails to clearly show the detail cited. A corrected drawing is submitted, along with an amendment to the specification. The corrections are to clearly show the detail cited. No new matter has been added with this correction and amendment.

Claims 1, 9-13, and 16-19 stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 5-7, 42, 44, 46-48 of copending Application No. 10/200,794. Applicants wish to hold in abeyance the filing of a terminal disclaimer for these claims pending the final outcome and form of these claims, and the claims of copending Application No. 10/200,794.

Claim 16 stands rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 16 has been amended to point out that the step for controlling the flows of hydrogen and oxygen is performed prior to the step of forming a mixture of hydrogen and oxygen. Applicants assert that claim 16 is now allowable.

Claims 1, 2, 4-6, 8 and 11-15 stand rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent Application Publication US 2003/0036753 A1 to Morgan et al. The reference teaches a method of electrosurgery using oxy-hydro combustion. However, the reference teaches using electrical means to initiate the combustion, such as with an active electrode and using a high frequency voltage, and does not teach, mention, or hint at the use of a catalyst for initiating combustion. The limitation of claim 12 using the catalyst has been amended into claim 1 to point out this aspect of the invention. The present invention does not use electrical means to initiate the combustion, and the present invention avoids exposing the body to strong electromagnetic fields by not using any electrical means in the invention. As this element is not in the Morgan et al. reference,

the reference does not anticipate, teach, or render obvious the present invention as presented in claim 1. Applicants assert that claim 1 is now allowable. Claims 2, 4-6, 8, 11, and 13-15 depend either directly or indirectly from claim 1, and through this dependency are not anticipated, taught, or rendered obvious, and are also allowable.

Claims 3 and 7 stand rejected as being dependent on a rejected base claim. Claim 1 has been amended, and claims 3 and 7 depend either directly or indirectly from claim 1. Applicants assert that claims 3 and 7 are now allowable.

In summary, claims 1-11 and 13-19 remain in the application. Claims 12 and 20-23 have been cancelled. Claims 1 and 16 have been amended and by these amendments no new matter has been added. The amendments have been made to clarify the claims and to make the claims consistent with the specification. Accordingly in view of the amendments and remarks, applicants assert that claims 1-11 and 13-19 meet all statutory requirements and respectfully request allowance of all pending claims. If the examiner believes it would expedite prosecution of the above identified application he is cordially invited to contact applicants' attorney at the below listed telephone number.

Respectfully submitted,

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Response and Amendment dated September 7, 2004
Reply to Office action of June 9, 2004
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Amendments to the Drawings:

Please replace Figure 1. The changes are to overcome the objection to the figure. No new matter has been added.

Attachment: Replacement Sheet 1